



May 7, 1999

Ms. Regina Atwell
City Attorney
City of Cleburne
P.O. Box 677
Cleburne, Texas 76033-0677

OR99-1252

Dear Ms. Atwell:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124263.

The City of Cleburne (the "city") received a request for six categories of information relating to the city's water pipeline project. You state that the city will provide the requestor with information responsive to item 5 of the request. You inform us that the city does not possess information responsive to items 1 and 3 of the request.¹ You contend that the city is not required to respond to items 4 and 6 of the request. You also argue that the information responsive to item 2 of the request is excepted from disclosure pursuant to section 552.105 of the Government Code. We have considered your arguments and have reviewed a representative sample of the documents at issue.²

Items 4 and 6 of the request are for the names, telephone numbers, and fax numbers of all companies and city officials involved in the pipeline project.³ You contend that the city is

¹We note that the act does not ordinarily require a governmental body to take affirmative steps to create or obtain information that is not in its possession. Open Records Decision No. 534 (1989).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³You "request permission to not convey personal information such as home phone numbers and address" of city officials. It is not clear that the requestor is seeking the home addresses and telephone numbers of city officials. We note that public officials' work addresses, telephone numbers, and fax numbers are public information.

not required to respond to these items of the request because they are requests for answers to fact questions, not requests for documents. You claim that responding “would require research and creation of documents.” We note that when a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that he may narrow or clarify his request. Open Records Decision Nos. 563 (1990), 561 (1990). Although the act does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request, a governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 563 (1990), 561 (1990), 555 (1990), 534 (1989). In other words, if you are able to identify documents in the city’s possession from which the requestor could ascertain the answers that he is seeking, you must provide the requestor with those documents. For example, the information the requestor is seeking about companies working on the pipeline project may be found in contracts the city has with these companies. While the act does not require you to compile the requested information from these documents, you should advise the requestor that he can obtain the information he is seeking from these documents.

You also object to item 4 of the request as a “standing request.” The act does not require a governmental body to treat a request as embracing information prepared after the request was made, or to inform the requestor subsequently when the information does come into existence. Open Records Decision No. 452 (1986).

Finally, you contend that the information responsive to item 2 of the request is excepted from disclosure pursuant to section 552.105. Section 552.105 excepts from disclosure information relating to:

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body’s planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Because this exception extends to “information pertaining to” the location, appraisals, and purchase price of property, it may protect more than a specific appraisal report prepared for a specific piece of property. Open Records Decision No. 564 at 2 (1990). For example, this office has concluded that appraisal information about parcels of land acquired in advance of others to be acquired for the same project could be withheld where this information would harm the governmental body’s negotiating position with respect to the remaining parcels. *Id.* A governmental body may withhold information “which, if released, would impair or tend to impair [its] ‘planning and negotiating position

in regard to particular transactions.’’ Open Records Decision No. 357 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). Information excepted from disclosure under section 552.105 may be withheld so long as the transaction is not complete. Open Records Decision No. 310 (1982).

You explain that

The City of Cleburne is currently involved in building a multi-million dollar water pipeline from Lake Aquilla to Lake Pat Cleburne which is a distance of approximately 33 miles and involves approximately 96 parcels of land that the city will need to acquire . . . The City respectfully asserts that Government Code, Section 552.105 allow the City to choose not to release [the requested information] because the release of such documents would damage the City’s negotiating position in the acquisition of nearby parcels of property . . . However, at this time only 10 of the 96 parcels have been sent to the title company for closing and the other 86 parcels are at various stages of negotiation. After closings are completed in the future, the City would suffer no harm in negotiations and would gladly allow inspection of all such documents by the requestor should he make a request at that time.

We agree that releasing the offer compromise, agreement for easement, and water utility easement for each parcel would impair the city’s planning and negotiation efforts. We agree that releasing the list of property owners along the proposed pipeline would have the same effect. Therefore, at this time the city may withhold this information from disclosure under section 552.105.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly legible.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 124263

encl. Submitted documents

cc: Mr. Michael Mauzy
R. R. 2, Box 187 A
Hillsboro, Texas 76645
(w/o enclosures)